

By Commissioner Nocco

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A proposal to amend
Section 16 of Article I of the State Constitution to
revise and establish additional rights of victims of
crime.

Be It Proposed by the Constitution Revision Commission of
Florida:

Section 16 of Article I of the State Constitution is
amended to read:

ARTICLE I

DECLARATION OF RIGHTS

SECTION 16. Rights of accused and of victims.-

(a) In all criminal prosecutions the accused shall, upon
demand, be informed of the nature and cause of the accusation,
and shall be furnished a copy of the charges, and shall have the
right to have compulsory process for witnesses, to confront at
trial adverse witnesses, to be heard in person, by counsel or
both, and to have a speedy and public trial by impartial jury in
the county where the crime was committed. If the county is not
known, the indictment or information may charge venue in two or
more counties conjunctively and proof that the crime was
committed in that area shall be sufficient; but before pleading
the accused may elect in which of those counties the trial will
take place. Venue for prosecution of crimes committed beyond the
boundaries of the state shall be fixed by law.

(b) To preserve and protect the right of crime victims to
achieve justice, to ensure a meaningful role throughout the
criminal and juvenile justice systems for crime victims, and to
ensure that crime victims' rights and interests are respected
and protected by law in a manner no less vigorous than the
protections afforded to criminal defendants and juvenile

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33 delinquents, every victim is entitled to the following rights,
34 beginning at the time of his or her victimization:

35 (1) The right to due process and to be treated with
36 fairness and respect for the victim's dignity.

37 (2) The right to be free from intimidation, harassment, and
38 abuse.

39 (3) The right to be reasonably protected from the accused
40 and any person acting on behalf of the accused.

41 (4) The right to have the safety and welfare of the victim
42 and the victim's family considered when setting bail, including
43 setting pre-trial release conditions that protect the safety and
44 welfare of the victim and victim's family.

45 (5) The right to prevent the disclosure of information or
46 records that could be used to locate or harass the victim or the
47 victim's family, or which could disclose confidential or
48 privileged information of the victim.

49 (6) The right to privacy, which includes the right to
50 refuse an interview, deposition, or other discovery request by
51 the defense or anyone acting on behalf of the defendant and to
52 set reasonable conditions on the conduct of any such interaction
53 to which the victim consents.

54 (7) A victim shall have the following specific rights upon
55 request:

56 a. The right to reasonable, accurate, and timely notice of,
57 and to be present at, all public proceedings involving the
58 criminal conduct, including, but not limited to, trial, plea,
59 sentencing, or adjudication, even if the victim will be a
60 witness at the proceeding, notwithstanding any rule to the
61 contrary. A victim shall also be provided reasonable, accurate,

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62 and timely notice of any release or escape of the defendant or
63 delinquent, and any proceeding during which a right of the
64 victim is implicated.

65 b. The right to be heard in any public proceeding involving
66 pretrial or other release from any form of legal constraint,
67 plea, sentencing, adjudication, or parole, and any proceeding
68 during which a right of the victim is implicated.

69 c. The right to confer with the state attorney concerning
70 any plea agreements, participation in pre-trial diversion
71 programs, release, restitution, sentencing, or any other
72 disposition of the case.

73 d. The right to provide information regarding the impact of
74 the offender's conduct on the victim and the victim's family to
75 the individual responsible for conducting any pre-sentence
76 investigation or compiling any pre-sentence investigation
77 report, and to have any such information considered in any
78 sentencing recommendations submitted to the court.

79 e. The right to receive a copy of any pre-sentence report,
80 and any other report or record relevant to the exercise of a
81 victim's right, except for such portions made confidential or
82 exempt by law.

83 f. The right to be informed of the conviction, sentence,
84 adjudication, place and time of incarceration, or other
85 disposition of the convicted offender, any scheduled release
86 date of the offender, and the release of or the escape by
87 offender from custody.

88 g. The right to be informed of all post-conviction
89 processes and procedures, to participate in such processes and
90 procedures, to provide information to the release authority to

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91 be considered before any release decision is made, and to be
92 notified of any release decision regarding the offender. The
93 parole or early release authority shall extend the right to be
94 heard to any person harmed by the offender.

95 h. The right to be informed of clemency and expungement
96 procedures, to provide information to the governor, the court,
97 any clemency board and other authority in these procedures, and
98 to have that information considered before a clemency or
99 expungement decision is made; and to be notified of such
100 decision in advance of any release of the offender.

101 (8) The right to the prompt return of the victim's property
102 when no longer needed as evidence in the case.

103 (9) The right to full and timely restitution in every case
104 and from each convicted offender for all losses suffered, both
105 directly and indirectly, by the victim as a result of the
106 criminal conduct. All monies and property collected from any
107 person who has been ordered to make restitution shall be first
108 applied to the restitution owed to the victim before paying any
109 amounts owed to the government.

110 (10) The right to proceedings free from unreasonable delay,
111 and to a prompt and final conclusion of the case and any related
112 post-judgment proceedings.

113 a. The state attorney may file a good faith demand for a
114 speedy trial and the trial court shall hold a hearing within 5
115 days to schedule a trial within 15 days unless the trial judge
116 enters an order with written findings of fact justifying a trial
117 date more than 15 days after the hearing.

118 b. All state-level appeals and collateral attacks on any
119 judgment must be complete within 2 years from the date of appeal

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120 in non-capital cases and 5 years in capital cases. Each year,
121 the chief judge of any district court of appeal or the chief
122 justice of the supreme court shall report on a case-by-case
123 basis to the speaker of the house of representatives and
124 president of the senate all cases where the court was unable to
125 comply with this subparagraph and the circumstances causing the
126 delay. The legislature may adopt legislation to implement this
127 subparagraph.

128 (11) The right to be informed of these rights, and to be
129 informed that victims can seek the advice of an attorney with
130 respect to their rights. This information shall be made
131 available to the general public and provided to all crime
132 victims in the form of a card.

133 (c) The victim, the retained attorney of the victim, a
134 lawful representative of the victim, or the office of the state
135 attorney upon request of the victim may assert and seek
136 enforcement of the rights enumerated in this section and any
137 other right afforded to a victim by law in any trial or
138 appellate court, or before any other authority with jurisdiction
139 over the case, as a matter of right. The court or other
140 authority with jurisdiction shall act promptly on such a
141 request, affording a remedy by due course of law for the
142 violation of any right. The reasons for any decision regarding
143 the disposition of a victim's right shall be clearly stated on
144 the record.

145 (d) The granting of these rights enumerated in this section
146 to victims may not be construed to deny or impair any other
147 rights possessed by victims. The provisions of this section
148 apply throughout criminal and juvenile justice processes are

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149 self-executing and does not require implementing legislation.

150 (e) As used in this section, a "victim" is a person who
151 suffers direct or threatened physical, psychological, or
152 financial harm as a result of the commission or attempted
153 commission of a crime or delinquent act or against whom the
154 crime or delinquent act is committed. The term "victim" shall
155 include their lawful representative, the parent or guardian of a
156 minor, or the next of kin of a homicide victim, except upon a
157 showing that the interest of such individual would be in actual
158 or potential conflict with the interests of the victim. The term
159 "victim" does not include the accused. The terms "crime" and
160 "criminal" include delinquent acts and conduct ~~Victims of crime~~
161 ~~or their lawful representatives, including the next of kin of~~
162 ~~homicide victims, are entitled to the right to be informed, to~~
163 ~~be present, and to be heard when relevant, at all crucial stages~~
164 ~~of criminal proceedings, to the extent that these rights do not~~
165 ~~interfere with the constitutional rights of the accused.~~